

Applicant : Mihai Ibanescu et al.
Serial No. : 10/008,963
Filed : October 25, 2001
Page : 11

Attorney's Docket No. 01997-324001

REMARKS

New claims 45-71 are identical to claims 8, 12, 14, 18, 19, 22, and 24-44, respectively, which were cancelled by an Examiner's Amendment included with the Notice of Allowance dated May 7, 2004. We ask that new claims 45-71 be allowed and a Supplemental Notice of Allowance be mailed indicating their allowance.

Although authorization for the Examiner's Amendment was given following a call by the Examiner to applicants' representative David Feigenbaum on April 30, 2004, Mr. Feigenbaum misunderstood the claims in question to be directed to a non-elected *invention* resulting from a Restriction Requirement. In fact, the claims in question were directed to a non-elected *species* (see Species Election and Response to Election Requirement dated February 25, 2003 and March 20, 2003, respectively). Upon a finding that a claim generic to all of the non-elected species is allowable, those claims directed to non-elected species should be examined (See MPEP 809.02(c)).

Such is the case in the present application. The Notice of Allowance dated May 7, 2004 indicates that claim 1 is allowed. Cancelled claims 8, 12, 14, 18, 19, 22, and 24-44 all depend, either directly or indirectly, from claim 1. Therefore, these claims should have been examined rather than cancelled as being directed to a non-elected species. Accordingly, we represent the cancelled claims as new claims 45-71 and asked that they be allowed, particularly where they all depend from claim 1, which is allowed.¹

The substance of these remarks was communicated to Examiner Nguyen to during a telephone interview with applicants' representative Marc Wefers on June 7, 2004. The Examiner generally agreed that cancelled claims should be allowable, because they all depend from claim 1. However, he asked that we formally represent the cancelled claims with the present amendment so that he could issue a Supplemental Notice of Allowance.

¹ Parenthetically, we note that claims 53, 60-62, 67, 68, 70, and 71 all depend on claim 1 through the body of the claim, as did their counterparts in the cancelled claims.

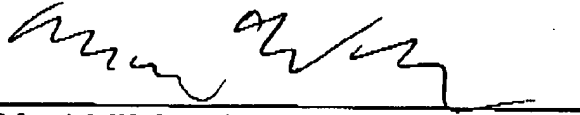
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Applicant asks that all claims be allowed in view of the amendment to the claims. Please apply any other charges or credits to Deposit Account No. 06-1050, referencing Attorney Docket No. 01997-324001.

Respectfully submitted,

Date: 6/29/04



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*See attached document certifying that Marc M. Wefers has limited recognition to practice before the U.S. Patent and Trademark Office under 37 C.F.R. § 10.9(b).

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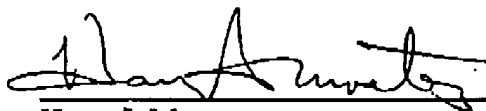
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Expires: December 6, 2004



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Director of Enrollment and Discipline